IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 239 OF 2007

IN

SUMMARY SUIT NO. 3367 OF 2004

The Cosmos Co-operative Bank Ltd. .... Plaintiff

Vs.

The Madhya Pradesh State Industrial Corporation & Ors. .... Defendant

Mr. Virag Tulzapurkar, Sr. Counsel a/w Ms. S. Srikrishna i/b Little & Co. for Plaintiff.
Mr. K.R. Belosey for Defendant.

CORAM : S.J. VAZIFDAR, J.
DATE : 8TH OCTOBER, 2007

P.C.

1) The suit is filed to recover a sum of Rs.75,75,876.88 with further interest thereon @ 14.4% per annum from the date of filing of the suit till its realisation.

2) The Plaintiff had purchased 200 bonds issued by the first defendant amounting to Rs.1.00 Lac each on the terms and conditions set out in the Information Memorandum. The Plaintiff had thus subscribed to bonds of the value of Rs.2.00 Crores.

3) Under clause (3) of the Financial Covenants and Conditions, defendant no. 1 is liable to pay

interest at 14.4% per annum subject to certain deductions. Interest was payable semi annually on 1st November and 1st May and the last interest was payable on redemption. The bonds were redeemable at par at the end of the fifth year from the revised date of allotment of 31st January 2000.

4) The Plaintiff is permitted to drop defendant nos. 2 and 3, namely the Government of Madhya Pradesh and the Principal Secretary, Department of Commerce & Industries, Government of Madhya Pradesh.

5) The claim in the suit has been admitted interalia by letters dated 2nd December 2003 and 6th December 2003. The first defendant expressed its inability to pay the amounts and requested the Plaintiff's co-operation in that behalf.

6) In the Affidavit-in-Reply the first defendant has raised no defence on merits. It has merely stated inter alia that in view of the market forces, it was unable to make payment and that it has sincere intentions of paying all the liabilities and there was no deliberate or willful default on the part of the defendants.

7) No other defences were raised at the hearing. The defences raised in Affidavit-in-reply are also without any substance. The question of maintainability of the suit is also decided against defendant by the Judgment of the Hon'ble Supreme Court in Greater Bombay Co-op. Bank Ltd. v/s United Yarn Tex. Pvt. Ltd. [2007 (3) Mah. L.J.], 434. Section 80 of the C.P.C. does not apply to the first defendants.

8) In the circumstances, there is absolutely no defence in the suit. Leave to defend is therefore rejected. The Summons for Judgment is made absolute and the suit is decreed as prayed.

Costs to be quantified as per rules.